

STATE WATER BOARD
RESOLUTION NO. 2005 - 0035

ADOPTION OF THE PROPOSED AMENDMENTS TO
THE CALIFORNIA OCEAN PLAN
(OCEAN PLAN)

WHEREAS:

1. The Ocean Plan was adopted by the State Water Board in 1972 and amended in 1978, 1983, 1988, 1990, 1997, and 2001.
2. The State Water Board is responsible for reviewing Ocean Plan water quality standards and for modifying and adopting standards in accordance with Section 303(c)(1) of the federal Clean Water Act and Section 13170.2 of the California Water Code (CWC).
3. The State Water Board held scoping meetings regarding four potential Ocean Plan amendments on January 23, 2004 and February 3, 2004. These included the following proposed revisions:
a) Choice of Indicator Organisms for Water-Contact Bacterial Standards, b) Establishing a Fecal Coliform Standard for Shellfish Harvesting Areas, c) Reclassifying Areas of Special Biological Significance (ASBS) to State Water Quality Protection Areas (SWQPAs) and establishing implementation provisions for discharges into SWQPAs, and d) Reasonable Potential: Determining the likelihood that the concentration of a pollutant would cause or contribute to an exceedance of water quality standards.
4. The State Water Board held a public hearing for the Triennial Review of the Ocean Plan on May 24, 2004 to receive additional public comment on other potential revisions of the Ocean Plan.
5. The State Water Board prepared and circulated a draft Functional Equivalent Document (FED) in accordance with the provisions of the California Environmental Quality Act and Title 14, California Code of Regulations 15251(g). The draft FED addressed Water-Contact Bacterial Standards and Reasonable Potential.
6. The State Water Board held a public hearing in Sacramento on October 6, 2004. The State Water Board received comments on the proposed bacterial and reasonable potential amendments. Staff informed the Board that the reasonable potential issue needed to undergo an external scientific peer review, pursuant to California Health and Safety Code section 57004. The State Water Board also determined that the bacterial issue needed more consideration and deferred a decision until the January 2005 workshop.
7. On January 20, 2005, the State Water Board adopted the modified bacterial water quality objectives for ocean waters in Chapter II, Section B of the Ocean Plan.
8. The State Water Board has received and considered the results of two external scientific peer reviews of the reasonable potential proposal. The peer reviews indicate that the proposed rule is based upon sound scientific knowledge, methods, and practices.
9. Assembly Bill 2800 (Chapter 385, Statutes of 2000) added sections to the Public Resources Code (PRC) that are relevant to ASBS, including Section 36750 of the PRC, which classified ASBS as SWQPAs as of January 1, 2003 without State Water Board action.
10. Senate Bill 512 (SB) (Chapter 854, Statutes of 2004) amended the marine managed areas portion of the PRC, effective January 1, 2005, to clarify that ASBS are a subset of SWQPAs and require special protection as determined by the State Water Board pursuant to the Ocean Plan and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan).

11. The classification of ASBS as a subset of SWQPAs does not change the ASBS designated use for these areas. Waste discharges to ASBS are still prohibited under the Ocean Plan unless an exception is granted.
12. After consideration of public comments received at the scoping meetings and based on SB 512, the State Water Board now proposes only minor changes to the Ocean Plan regarding ASBS and exceptions.
13. The State Water Board staff has prepared a Final FED, covering the reasonable potential and the ASBS and exception issues, which is an Attachment to this resolution. The Final FED includes the specific proposed amendments to the Ocean Plan. The State Water Board has carefully considered all testimony and comments received on these issues.
14. On April 6, 2005, the State Water Board held a public hearing to consider the draft Final FED, the amendments regarding ASBS and exceptions, and changes in the reasonable potential amendments since the October 6, 2004 public hearing.
15. Amendments to the Ocean Plan do not become effective until approved by the Office of Administrative Law (OAL) and the U.S. Environmental Protection Agency.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Deletes the existing Ocean Plan language in Chapter III, Section G(2) that allows discharger certification *in lieu* of monitoring and adds general reasonable potential language in Chapter III Section C of the Ocean Plan, and adds the reasonable potential analysis procedure language in a new Ocean Plan Appendix VI, as shown on the Attachment to this Resolution.
2. Incorporates the Classification of ASBS as SWQPAs, according to the PRC, renames certain ASBS to coincide with name changes in other corresponding Marine Managed Areas, clarifies that all exceptions are subject to Triennial Review, and adds a new Appendix VII with a Table VII-1 listing exceptions to the Ocean Plan, as shown on the Attachment to this Resolution.
3. Approves the Final FED attached to the resolution.
4. Authorizes the Executive Director to sign the Certificate of Fee Exemption.
5. Authorizes staff to submit the amended Ocean Plan to the Office of Administrative Law and the USEPA for final approval.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on April 21, 2005.


Debbie Irvin
Clerk to the Board